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Remarks/Arguments

By way of the present amendment, Applicants have canceled Claims 1-7, 11 and Claims 15-20; amended Claims 8, 9, 12 and 13; and added four new Claims 21-24. Ten (10) claims remain pending in the application: Claims 8-10, 12-14, and 21-24, of which Claims 8 and 24 are independent.

Applicants respectfully request reconsideration of the pending claims, in view of the amendments above and comments below.

Claim Rejections

The Examiner rejected Claim 9 under 35 U.S.C. § 112, second paragraph. In particular the Examiner has indicated that "the port" in line 3 has insufficient antecedent basis. Claim 9 has been amended to address this concern, hence this rejection should be overcome.

The Examiner further rejected Claims 8 and 11-12 under 35 U.S.C. §103(a) as being unpatentable (obvious) over Zilberman et al. (U.S. Patent No. 5,824,022) in view of Sacherman et al. (U.S. Patent No. 5,369,857) or Toht (U.S. Patent No. 2,930,856). The Examiner also rejected Claims 9-10 under 35 U.S.C. §103(a) as being unpatentable (obvious) over Zilberman et al. ('022 patent) in view of Sacherman et al. ('857 patent) or Toht ('856 patent) as applied to Claim 8 above and further in view of Flystad (U.S. Patent No. 3,396,245) or Groppe (U.S. Patent No. 5,086,464). Further, the Examiner rejected Claims 13-14 under 35 U.S.C. §103(a) as being unpatentable (obvious) over Zilberman et al. ('022 patent) in view of Sacherman et al. ('857 patent) or Toht ('856 patent) as applied to Claim 8 above and further in view of Huth (U.S. Patent No. 3,098,127) or de Vries et al. (U.S. Patent No. 4,727,582).

Claim 8 has been amended to include the subject matter from original Claim 11 (which claim has been canceled) and to include a limitation not found, taught or suggested by Zilberman et al. alone or in any combination with the cited references of Sacherman et al., Toht, Flystad, Groppe, Huth, or de Vries et al.

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Applicants submit that the limitation:

a bendable, formable stalk having a first end attached to the BTE device and a second end adapted to be attached to the terminal end of the ITE microphone, wherein the stalk includes at least one stiffening member, and wherein the stalk is adapted to position the ITE microphone within the concha of a user's ear so that the soundport of the ITE microphone points axially away from a longitudinal axis of the stalk

is not found, taught or suggested by Zilberman et al.

Zilberman et al. fail to teach a Behind The Ear Implantable Cochlear Stimulation system which includes a bendable, formable stalk used to position a microphone in the concha of the ear with the soundport facing outward from the longitudinal axis of the stalk. Support for this limitation is found, *inter alia*, in FIG. 5 and accompanying text. Rather, Zilberman et al., teach a headpiece assembly having a microphone tube 36 coupled to the end of the case 32, allowing the microphone 38 to be positioned inside of, or near, the ear canal. See Col. 5, lines 20-24.

Sacherman et al. and Toht alone or in combination with Zilberman et al. do not show, teach or suggest the added limitation, and both Huth and de Vries et al. teach a hearing aid device having a microphone that is also positioned inside the ear canal of a user.

As presented in amended Claim 8, Applicants teach a Behind The Ear Implantable Cochlear Stimulation system which includes a bendable, formable stalk used to position a microphone towards the concha of the ear with a soundport facing downward (away from the end of the stalk). The concha is part of the external ear and "[t]he microphone assembly 26 preferably resides behind the tragus and directed towards the concha of the ear, with the soundport 30 facing downward and somewhat rearward." See paragraph [0027] and FIG. 3.

Hence, it is respectfully submitted that Zilberman et al. reference alone or in combination with the cited references do not teach, or suggest, Applicants' invention. In view of the foregoing discussion, it is believed that the obviousness rejection should be overcome with respect to independent Claim 8.

Further, since Claims 9-10 and 12-14 are dependent claims that depend directly

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or indirectly from independent Claim 8, these claims should be allowable for this reason alone (although not necessarily the only reason).

Any combination of positioning the microphone assembly behind the tragus and directed towards the concha of the ear is intended to come within the scope of pending Claims 8-10, 12-14 and 21. "Some users may vary location of the microphone assembly 26, and these variations are intended to come within the scope of the present invention". See paragraph [0027] from Applicants' specification.

Newly Added Claims

By way of the present amendment, new Claims 21-24 have also been added. Support for these new Claims 21 is found, e.g., in paragraph [0029] and FIG. 5. New Claim 21 should also be allowable for the same reasons that Claim 8 is allowable.

New independent Claim 24 should be allowable for substantially the same reasons that amended Claim 8 is allowable. That is, it is submitted that the prior art, alone or in combination, fails to teach, show or suggest

a microphone assembly . . . wherein there is included a bendable, formable stalk that has a first end attached to the earhook and a second end attached to the microphone, and wherein the microphone is positioned on the second end of the stalk so as to be adapted to reside within a concha of a user's ear with the soundport directed in a direction set by the user when the BTE unit is worn on the user's ear.

Conclusion

In view of the above, it is respectfully submitted that Claims 8-10, 12-14 and 21-24 should be in condition for allowance. An indication of allowability with respect to these claims is earnestly solicited.

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The Examiner is invited to telephone the undersigned, Victoria A. Poissant, at the telephone number indicated below, or Bryant R. Gold, at one of the telephone numbers indicated below, should any issues remain after consideration and entry of this response, in order to permit early resolution of such issues.

Respectfully Submitted,



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